THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.23197 of 1998

Dated: 5-1-2006

Between:

Mohd.Sirajuddin, son of late

Mohd.Karimuddin aged about 50 years

Occ: Business, Resident of 11-5-454,

Red Hills, Hyderabad and another

…..PETITIONERS

AND

The Commissioner of Municipal Corporation

of Hyderbad, Tank Bund, Hyderabad.

….RESPONDENT

THE HONOURABLE SRI JUSTICE

N.V.RAMANA

W.P.No.23197 of 1998

ORDER:

This writ petition seeks a direction to the respondent not to take any punitive action for demolition of the 4th floor and the pent house constructed in the 5th floor of the petitioners' premises situated at Plot No.25, H.No.11-5-454, Red Hills, Hyderabad in

pursuance of permit No.428/19 dated 13-6-1994, without following the due procedure as contemplated under Section 452 of the Municipal Corporation of Hyderabad Act, 1955 (for short the M.C.H. Act).

Petitioners herein who are husband and wife, respectively, purchased 986 Sq. yards of land and building in Plot No.25,
H.No.11-5-454 and 1,298 Sq. Yards situated in Red Hills, Hyderabad from the same vendor. Both the purchases are registered with the Sub-Registrar, Khairatabad, Hyderabad. Petitioners with a view to jointly construct a new building on the premises by demolishing the old structure obtained valid permission for construction of ground plus three (3) Floors vide permit No.428/19 and Letter No.458/TP4/93 dated 13-6-1994. They constructed the new building according to the sanctioned plan, but in addition had raised fourth Floor and a pent house on the fifth floor.

The learned counsel for the petitioners submits that the respondent authorities without issuing any notice as contemplated under Section 452 of M.C.H Act and without making any adjudication as specified in the said Section, are trying to demolish the fourth floor and the pent house constructed on the fifth floor, which is illegal and arbitrary. Learned counsel for the petitioners submitted that the Government of A.P. vide Memo No.2489/M1/94-2 M.A., dated 18-6-1996, relaxed the Zoning Regulation in respect of F.S.I as applied for, and directed the petitioners to pay penal amount of Rs.7,40,835/-, and thereafter, the petitioners made a representation to the government to review the said regularization, but in vain.

It is contended by the learned Standing Counsel for the Municipal Corporation that the application filed by the petitioners for regularization under Building Regularization Scheme was rejected by the Municipal Corporation by order dated 30-5-2000, and it was also communicated to the petitioners. However, the petitioners denied receipt of any such communication. In the additional counter affidavit filed by the Commissioner, Municipal Corporation of Hyderabad it is stated that the application filed by the petitioners under the Building Regulation Scheme as issued in G.O. Ms. No. 419 dated 30-07-1998 seeking regularization of the fourth floor and pent house on the fifth floor was rejected on
30-5-2000 on the ground that the said authorized construction was made after the cut off date (30-6-1998) and he could not find from the record any acknowledgment from the petitioners as proof of receipt of the said letter of rejection. It is also stated that at the time of filing of the writ petition the building was at incomplete stage and only structure was completed and though there was an order of *status quo,* petitioners have completed the construction of the building and occupied the same.

On 26-4-2005, when the learned Standing Counsel for respondent Corporation submitted that the officials are unable to trace out the acknowledgement of the show-cause notice served on the petitioners, this Court directed the Commissioner, Municipal Corporation of Hyderabad, to conduct an enquiry with regard to the misplacement of the acknowledgment and submit a report. In pursuance thereof, the Commissioner, Municipal Corporation of Hyderabad, filed affidavit *inter-alia* stating that pursuant to the directions of this Court dated 26-4-2005 Sri K.Krishna Murthy, concerned City Planner was appointed as Enquiry Officer to

probe into the issue, and the Enquiry Officer after examining all concerned, and after verification of the files, submitted a report on 12-7-2005. The report reveals that as per the entries in the Outward Register of Circle Office, Ward No.11, the connected U.C. File was handed over to the learned Standing Counsel for the Corporation in the High Court, and the learned Standing Counsel for the Corporation had stated that he could not trace the U.C file in his office. In the report it is stated that it is not clear whether the files, which were said to have been handed over to the Standing counsel were taken back or not, and it is the duty of the concerned Section Officer to keep the files with him, and necessary notices were given to the erstwhile Section Officer concerned, asking him to explain, and necessary action will be taken against the concerned.

At this stage, the learned counsel for the petitioners submitted that the petitioners be permitted to withdraw the writ petition with liberty to challenge the order dated 30-05-2000 passed by the respondents rejecting the application filed by the petitioners under the Building Regulation Scheme as issued in G.O. Ms. No. 419, dated 30-7-1988 seeking regularization of deviations in the construction of the building. Permission is accorded.

In the result, the writ petition is dismissed as withdrawn. Petitioners are at liberty to challenge the proceedings dated
30-5-2000 rejecting their request for regularization of the deviations made by them in the construction of the building in terms of the Building Regulation Scheme, as issued in G.O. Ms. No. 419, dated 30-7-1988. No costs.

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(N.V. RAMANA, J.)

Date:5th January, 2006.

GRK